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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,521	03/26/2004	Emmanuel Marilly	Q80686	7535
23373	7590	12/27/2007	EXAMINER	
SUGHRUE MION, PLLC			RUBIN, BLAKE J	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037			4152	
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			12/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/809,521	MARILLY ET AL.	
Examiner	Art Unit		
Rubin Blake	4152		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 26 March 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-33 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-33 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on March 26, 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. 10/809,521.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

✓ See

**SAM RIMELL**  
**PRIMARY EXAMINER**

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 06/23/2004.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_ .

### **DETAILED ACTION**

1. This action is in response to communications filed March 26, 2004,
2. Claims 1-33 are pending in this application.
3. This application claims priority to a foreign application with foreign priority # 0303835, filed in France on March 28, 2003.
4. Preliminary amendments have been made to claims 1, 26, 32, and 33.

#### ***Specification***

5. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: "wei – where here  $l = 1$  or 2, but it can take any value" (page 6, line 6).

#### ***Drawings***

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: it is *preferred* that all elements in the drawings be accompanied by numerical characters representing each element. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 32-33 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 1 recites the limitation "said equipment element" in lines 5-6, and line 12. There is insufficient antecedent basis for this limitation in the claim. The examiners best effort at interpreting this claim regards the "equipment element" as the "network element", it is this interpretation that shall be used throughout the interpretation of the claims, and as such, proper corrections should be made throughout (as similar insufficient antecedent basis is found throughout referring to the "equipment element"). Claims 2-33 are similarly rejected on the basis of insufficient antecedent basis, as a result of their dependency on claim 1.

12. Claim 1 recites the limitation "said measured values" in line 10. There is insufficient antecedent basis for this limitation in the claim. The examiners best effort at interpreting this claim regards the "said measured values" as the "said parameter values", it is this interpretation that shall be used throughout the interpretation of the claims, and as such, proper corrections should be made throughout.

13. Claim 10 recites the limitation "said analysis means (SM1)" in lines 20-21. There is insufficient antecedent basis for this limitation in the claim. Similar references are found throughout the claims made to "said alarm means (SM2)", "said network observation means (SM3)", "said service level agreement management means (SM4)", and "said monitoring means (SM5)". Such references are made throughout (see claim 15 for the first instance of such an improper claim), and while prior, original, references

to such elements can be found in earlier claims, the claims which they are cited in are not properly dependent on any of the claims which set a precedence for such terms, and therefore lack sufficient antecedent basis needed to implement "said" phraseology, and thus cannot incorporate any functions or meanings to such terms.

14. Claim 2 recites, "a change to its method of operation," which renders the claim unclear and ambiguous. All references to a "method" in the specification are in relation to "assurance methods," therefor the claim will be interpreted in such context.

15. Claims 32-33 provide for the use of the "device or arrangement, the equipment element, and communication network with any one of the preceding claims," but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. It is also noted that the claim

16. The term "large variety of network elements" in claim 30 is a relative term which renders the claim indefinite. The term "large variety of network elements" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree (see specification objection in paragraph 4 of this action), and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant must specify both a quantity, or range, of what is meant by "large," as well as the types of elements that could be construed as "network elements" and the criteria that are to be used in assessing and measuring the variety therewith.

***Claim Rejections - 35 USC § 102***

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

18. Claims 1-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Sistanizadeh et al. (Patent No. 6,681,232), hereinafter Sistanizadeh.

19. With respect to claim 1, Sistanizadeh discloses a local assurance management device (D) for a network element (NE) (column 8, lines 27-50) in a communication network (N) equipped with a network management system (NMS) (column 6, lines 41-46; column 5, lines 35-43)), where said equipment element (NE) presents a chosen configuration (column 6, lines 1-3) and includes means (MM) for the measurement of parameter values in the network (column 19, lines 31-35), and a built-in management information base (MIB) used to store management data which are representative of said measured values (column 16, lines 13-34), characterized in that it includes management means (MAE) which are arranged to adapt the configuration of said equipment element (NE) according to at least said management data stored in said management information base (MIB), and chosen rules, known as assurance rules, defining a local assurance policy, where said adaptation comprises a change to a

measurement policy parameter and/or a change to a report transmission policy to said network management system (NMS) (column 16, lines 13-34, column 18, lines 48-67).

20. With respect to claim 2, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) are arranged so as to adapt said configuration in according to information data coming from at least one other network element (NE) (column 18, lines 48-67).

21. With respect to claim 3, Sistanizadeh discloses a device according to claim 1, characterized in that said adaptation comprises a change to its method of operation (column 21, lines 48-51).

22. With respect to claim 4, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) include analysis means (SM1) arranged so as to determine, in accordance with certain of said chosen assurance rules, information data representing the changes in time, over a chosen interval, of parameter values in the network stored in said management information base (MIB) (column 21, lines 7-14).

23. With respect to claim 5, Sistanizadeh discloses a device according to claim 4, characterized in that said analysis means (SM1) are arranged so as to deliver information data representing a trend analysis and/or an analysis of profiles or signatures and/or an analysis of discontinuity and/or an aggregation of network parameter values (column 18, lines 63; column 19, lines 1-35).

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24. With respect to claim 6, Sistanizadeh discloses a device according to claim 4, characterized in that said analysis means (SM1) are configurable (column 29, lines 5-14).

25. With respect to claim 7, Sistanizadeh discloses a device according to claim 6, characterized in that said analysis means (SM1) are arranged so as perform fresh calculations relating to the network parameters received from said network management system (NMS) (column 20, lines 65-67; column 21, lines 1-14).

26. With respect to claim 8, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) include alarm means (SM2) able to trigger the sending of an alarm and/or of information data to said network management system (NMS) and/or to at least one other network element (NE), in accordance with certain of said chosen assurance rules (column 16, lines 25-34).

27. With respect to claim 9, Sistanizadeh discloses a device according to claim 8, characterized in that said alarm means (SM2) are configurable (column 12, lines 65-76; column 13, lines 1-6).

28. With respect to claim 10, Sistanizadeh discloses a device according to claim 8, characterized in that said information data and said alarms are representative of the results of analyses performed by said analysis means (SM1), and/or of data aggregation, effected by said analysis means (SM1), and/or of a network parameter value stored in said management information base (MIB) (column 12, lines 65-76; column 13, lines 1-6).

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29. With respect to claim 11, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) include network observation means (SM3) defining a flow measurement agent of the end-to-end type, arranged so as to determine information data which are representative of said flow of the end-to-end type in accordance with certain of said chosen assurance rules (column 20, lines 13-26).

30. With respect to claim 12, Sistanizadeh discloses a device according to claim 11, characterized in that said network observation means (SM3) are configurable (column 20, lines 35-45).

31. With respect to claim 13, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) include means for the management of service level agreements or SLAs (SM4), arranged so as to determine information data representing said agreement management in accordance with certain of said chosen assurance rules (column 6, lines 10-30).

32. With respect to claim 14, Sistanizadeh discloses a device according to claim 13, characterized in that said service level agreement management means (SM4) are configurable (column 6, lines 10-30).

33. With respect to claim 15, Sistanizadeh discloses a device according to claim 2, characterized in that said management means (MAE) include monitoring means (SM5) which are able to manage the operation of said analysis means (SM1), of said alarm means (SM2), of said network observation means (SM3) and of the service level

agreement management means (SM4), in accordance with at least some of said chosen assurance rules (column 6, lines 49-65; column 16, lines 13-64).

34. With respect to claim 16, Sistanizadeh discloses a device according to claim 15, characterized in that said monitoring means (SM5) are supplied with information data by said analysis means (SM1) and/or said network observation means (SM3) and/or the service level agreement management means (SM4), and are arranged so as to order said alarm means (SM2) to generate alarms and/or reports in the event of detecting non-compliance with an assurance rule by received the information data (column 6, lines 49-65; column 16, lines 13-64).

35. With respect to claim 17, Sistanizadeh discloses a device according to claim 15, characterized in that said monitoring means (SM5) are arranged in the form of a rule engine storing said chosen assurance rules (column 6, lines 49-65; column 16, lines 13-64).

36. With respect to claim 18, Sistanizadeh discloses a device according to claim 15, characterized in that said monitoring means (SM5) are configurable (column 6, lines 49-65; column 16, lines 13-64).

37. With respect to claim 19, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) are capable of being configured by said network management system (NMS) via an application programming interface (API) of said equipment element (NE) (column 18, lines 48-62).

38. With respect to claim 20, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) are capable of being configured

by said network management system (NMS) via an application programming interface (API) of said equipment element (NE) and via said management information base (MIB) (column 18, lines 48-62).

39. With respect to claim 21, Sistanizadeh discloses a device according to claim 19, characterized in that said analysis means (SM1) and/or said alarm means (SM2) and/or said network observation means (SM3) and/or said monitoring means (SM5) and/or the service level agreement management means (SM4) are capable of being configured by said network management system (NMS), via said application programming interface (API) (column 18, lines 48-62).

40. With respect to claim 22, Sistanizadeh discloses a device according to claim 20, characterized in that said analysis means (SM1) and/or said alarm means (SM2) and/or said network observation means (SM3) and/or said monitoring means (SM5) and/or the service level agreement management means (SM4) are capable of being configured by said network management system (NMS), via said application programming interface (API) and via said management information base (MIB) (column 18, lines 48-62).

41. With respect to claim 23, Sistanizadeh discloses a device according to claim 1, characterized in that said management means (MAE) are capable of being configured by said network management system (NMS) using dedicated commands (column 32, lines 38-51).

42. With respect to claim 24, Sistanizadeh discloses a device according to claim 23, characterized in that said analysis means (SM1) and/or said alarm means (SM2) and/or said network observation means (SM3) and/or said service level agreement

management means (SM4) and/or said monitoring means (SM5) are arranged so as to be capable of being configured by said network management system (NMS) using dedicated commands (column 30, lines 34-48; column 32, lines 38-51).

43. With respect to claim 25, Sistanizadeh discloses a device according to claim 23, characterized in that said commands are of the "Command Line Interface" type (column 30, lines 34-48; column 32, lines 38-51).

44. With respect to claim 26, Sistanizadeh discloses a network element (NE) for a communication network (N) equipped with a network management system (NMS), where said equipment element (NE) presents a chosen configuration and including means (MM) for the measurement of parameter values in the network and a management information base (MIB) capable of storing management data representing said measured values, characterized in that it includes a device or arrangement (D) in accordance with claim 1 (column 16, lines 13-34, column 18, lines 48-67).

45. With respect to claim 27, Sistanizadeh discloses an equipment element in accordance with claim 26, characterized in that it includes an application programming interface (API), and in that said management information base (MIB) is capable of being configured by said network management system (NMS) via said application programming interface (API) (column 16, lines 13-34, column 18, lines 48-67).

46. With respect to claim 28, Sistanizadeh discloses an equipment element in accordance with claim 26, characterized in that it includes an application programming interface (API), and in that said management information base (MIB) is capable of being

programmed by said network management system (NMS) via said application programming interface (API) (column 16, lines 13-34, column 18, lines 48-67).

47. With respect to claim 29, Sistanizadeh discloses an equipment element in accordance with claim 26, characterized in that it is chosen from a group which includes at least the routers, the switches and the firewalls (column 12, lines 65-67; column 13, lines 1-6).

48. With respect to claim 30, Sistanizadeh discloses a communication network (N), containing a network management system (NMS), characterized in that it includes a large variety of network equipment (NE) in accordance with claim 26 (column 12, lines 65-67; column 13, lines 1-6; column 19, lines 65-67; column 20, lines 1-10; column 11, lines 14-22).

49. With respect to claim 31, Sistanizadeh discloses a network in accordance with claim 30, characterized in that each equipment element (NE) is arranged to deliver alarms and/or information data of various types to said network management system (NMS) (column 16, lines 25-34).

50. With respect to claim 32, Sistanizadeh discloses the use of the device or arrangement, the equipment element, and communication network, in accordance with claim 1, in the network technologies needing to be managed (column 19, lines 65-67; column 20, lines 1-10).

51. With respect to claim 33, Sistanizadeh discloses the use in accordance with claim 32, characterized in that said network technologies are chosen from a group which includes transmission networks, in particular of the WDM, SONET and SDH type,

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management networks, in particular of the Internet-IP and ATM type, and speech networks, in particular of the conventional, mobile and NGN type (column 9, lines 40-50).

52. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLAKE RUBIN whose telephone number is (571)270-3802. The examiner can normally be reached on M-R: 7:30-5:00.

53. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nabil El-Hady can be reached on (571) 272-3963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

54. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BJR  
12/5/07



SAM RIMELL  
PRIMARY EXAMINER